



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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LINDA S. ADAMS
SECRETARY FOR
ENVIRONMENTAL PROTECTION

ARNOLD SCHWARZENEGGER
GOVERNOR

Certified Mail: 7002 0510 0003 2320 0988

April 16, 2009

Mr. Doug Moretto, Captain
City of Sunnyvale
Department of Public Safety
700 All America Way
P.O. Box 3707
Sunnyvale, California 94088-3707

Dear Mr. Moretto:

The California Environmental Protection Agency (Cal/EPA), California Emergency Management Agency, Office of the State Fire Marshal, Department of Toxic Substances Control, and the State Water Resources Control Board conducted a program evaluation of the City of Sunnyvale Department of Public Safety Certified Unified Program Agency (CUPA) on March 11 and 12, 2009. The evaluation was comprised of an in-office program review and field oversight inspections by State evaluators. The evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff. The Summary of Findings includes identified deficiencies, a list of corrective actions, program observations, program recommendations, and examples of outstanding program implementation.

The enclosed Evaluation Summary of Findings is now considered final and based upon review, I find that City of Sunnyvale Department of Public Safety's program performance meets standards.

Cal/EPA also noted during this evaluation that the City of Sunnyvale Department of Public Safety has worked to bring about a number of local program innovations, including their streamlined plan review and permit issuance process with the city's One-Stop Permit Center, hazardous waste generator and tiered permitting workshops for the regulated business community, "Worker Right to Know" classes for the City of Sunnyvale employees, and active participation in other community events such as the Public Safety Pancake Breakfast and Columbia School Health Faire. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program website to help foster a sharing of such ideas statewide.

Mr. Doug Moretto, Captain
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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by email at jbohon@calepa.ca.gov.

Sincerely,

[Original signed by Don Johnson]

Don Johnson
Assistant Secretary
California Environmental Protection Agency

Enclosure

cc sent via email:

Mr. Ron Staricha
Hazardous Materials Coordinator (CUPA Manager)
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Mr. Jeffrey Tkach
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Mr. Mark Pear
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Mr. Doug Moretto, Captain

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cc sent via email:

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Enclosure



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CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS

CUPA: CITY OF SUNNYVALE DEPARTMENT OF PUBLIC SAFETY

Evaluation Date: March 11 and 12, 2009

EVALUATION TEAM

Cal/EPA and OSFM: Jennifer Lorenzo
SWRCB: Terry Snyder
Cal EMA (formerly OES): Jeff Tkach
DTSC: Mark Pear

This Evaluation Summary of Findings includes the deficiencies identified during the evaluation, program observations and recommendations, and examples of outstanding program implementation activities. Questions or comments can be directed to Jennifer Lorenzo at (916) 324-0232.

| | <u>Deficiency</u> | <u>Corrective Action</u> |
|---|--|--|
| 1 | <p>The City of Sunnyvale maintains a special account for all penalties and fines collected by the CUPA from enforcement actions; however, at the end of each fiscal year (FY), the money is transferred into the city's general fund.</p> <p>HSC, Chapter 6.11, Section 25404.1.1 (i)[Cal/EPA]</p> | <p>This deficiency was corrected on March 31, 2009. No further corrective action is necessary.</p> <p>The City of Sunnyvale has set up a new fund entitled the CUPA Revolving Fund to track and account for all monies received from CUPA fines and penalties. The monies in this account will remain in the account until appropriated as needed to support or enhance the City of Sunnyvale's Hazardous Materials program.</p> |
| 2 | <p>The City of Sunnyvale is not fully implementing the fee accountability program. Once the penalty money from the CUPA's enforcement actions are transferred from a special account into the city's general fund at the end of each fiscal year, the City of Sunnyvale is unable to account for how the penalty money is utilized specifically to fund the activities of the Unified Program.</p> <p>CCR, Title 27, Section 15220 (a)(1) [Cal/EPA]</p> | <p>This deficiency was corrected on March 31, 2009. No further corrective action is necessary.</p> <p>The City of Sunnyvale submitted documentation showing how the fines and penalties collected by the CUPA have been utilized within the last three fiscal years.</p> |

Certified Unified Program Agency (CUPA)
Evaluation Summary of Findings

| | | |
|----------------------------|-------------------------------------|---------------------------------------|
| CUPA Representative | <u>Ron Staricha</u> (Print Name) | <u>Original signed</u> (Signature) |
|----------------------------|-------------------------------------|---------------------------------------|

| | | |
|-------------------------------|--|---------------------------------------|
| Evaluation Team Leader | <u>Jennifer L. Lorenzo</u> (Print Name) | <u>Original signed</u> (Signature) |
|-------------------------------|--|---------------------------------------|

PROGRAM OBSERVATIONS AND RECOMMENDATIONS

The observations provided in this section address activities that are not specifically required of the CUPA by statute or regulation. The recommendations, if any, are provided for continuous improvement and it is the CUPA's decision whether or not to follow the recommendations.

1. **Observation:** Based on the CUPA's FY 07/08 Annual Inspection and Enforcement Summary Reports, the CUPA has begun inspecting its aboveground petroleum storage tank (AST) facilities for compliance with the Aboveground Petroleum Storage Act (APSA). Additionally, the CUPA has also begun enforcing the requirements of APSA.

Recommendation: Cal/EPA encourages the CUPA to conduct outreach visits at aboveground petroleum storage tank facilities on the requirements of APSA. Once the CUPA's inspectors receive APSA training and successfully pass their exam, the CUPA may commence APSA routine/compliance inspections.

2. **Observation:** The CUPA has an excellent self-audit report with information that is presented in a clear and concise manner, accurately depicting the CUPA's activities throughout the reporting year.

Recommendation: Cal/EPA recommends that the CUPA continue to keep up the good work.

3. **Observation:** Some of the CUPA's inspection reports do not distinguish among Class I, Class II, and minor violations. A few of the inspection reports state "All violations minor unless otherwise stated."

Recommendation: DTSC recommends that the CUPA modify its inspection reports so that each violation can be classified separately to distinguish between enforcement modes for Class I, Class II and minor violations.

4. **Observation:** During the March 4, 2009, hazardous waste inspection, the inspector did not cover the entire facility grounds. While the inspector noted unlabeled and open containers of hazardous waste, the storage of incompatible hazardous materials, and inadequate aisle space, the inspector overlooked whether or not the facility had characterized influent to an oil-water separator.

Recommendation: While the inspector demonstrated a good knowledge of the regulatory requirements applicable to the facility and had a good relationship with facility personnel, staff should be reminded to ensure the completeness of inspections. Please inspect the entire facility, take your own notes as you go along, and check the status of the influent to the separator.

5. **Observation:** The CUPA inspectors utilize the Unidocs inspection checklists, but the checklists are not retained for documentation in the facility files.

Recommendation: DTSC recommends that the CUPA retains the Unidocs checklist in each facility file.

6. **Observation:** The Underground Storage Tank (UST) Permit Application – Facility Information form (Form A) was missing the Board of Equalization UST Storage Fee Account Number (BOE No.) in more than half of the files reviewed by the SWRCB.

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Recommendation: The SWRCB reminds the CUPA that when the applicant/permit holder submits or updates Form A, they should also include the required BOE No. on the form. If the number is missing, the CUPA should verify that the facility has a BOE No. before issuing a permit or obtain it during the annual inspection. If the facility does not have a BOE No., the CUPA should instruct the facility owner/operator to contact the State Board of Equalization, Fuel Tax Division, and get a number and report it to the CUPA on Form A.

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EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION

1. In addition to implementing the Unified Program, the City of Sunnyvale's Department of Public Safety, Fire and Environmental Services CUPA effectively continues to implement the county-wide hazardous materials storage and toxic gas ordinances, which are both more stringent than state laws and regulations. The hazardous materials storage ordinance allows the CUPA to regulate facilities that use, store and/or handle hazardous materials below the state's minimum threshold quantities. The toxic gas ordinance regulates businesses that use, store, or handle toxic gases in any quantity.
2. The City of Sunnyvale Department of Public Safety CUPA maintains a commendable inspection program. The CUPA has a goal of annually inspecting all of its regulated facilities, which they met for the UST program and generally met for the other Unified Program elements within the last three fiscal years. The CUPA conducts a majority of its compliance inspections as "combined" inspections, such as conducting various Unified Program elements and also, if applicable, the waste tire program.
3. The City of Sunnyvale Department of Public Safety CUPA continues to implement an excellent enforcement program. While the primary goal of the CUPA is to obtain compliance, the CUPA has continued to initiate formal enforcement actions when necessary. In the last three fiscal years, the CUPA has successfully settled 11 administrative enforcement orders (AEO) and referred two cases to the City Attorney (CA) or District Attorney (DA) for civil/criminal prosecution. During the current fiscal year (08/09), the CUPA has settled at least six AEOs and referred two cases to the CA/DA for prosecution. Examples of some notable formal enforcement cases are as follows:
 - Settled an administrative order with Applied Materials for \$2,639 in penalties. Respondent failed to complete a hazardous waste tank certification for its CA treatment system.
 - Settled an administrative order with Precision Tune Auto Care for \$1,000 for failure to maintain a UST monitoring system.
 - Settled an administrative order with Berkeley Land Co. for \$3,000 in penalties for failure to annually test a UST and to have the UST system inspected by a Designated Operator.
 - Settled an administrative order with CTT for \$1,000 in penalties. Respondent failed to properly label hazardous waste and illegally disposed of it.
 - Settled an administrative order with Nanoconduction for \$8,100 in penalties. Respondent failed to report ammonia gas on their HMBP.
 - Settled an administrative order with Road Runner Automotive for \$600.00 in penalties. Respondent illegally disposed of an unknown number of gallons of used antifreeze (ethylene glycol) into an in ground oil water separator which was connected to the sanitary sewer system.
 - Settled an administrative order with UPS for \$8,400 in penalties. Respondent negligently disposed of used oil at a point which was not authorized and engaged in the transportation of hazardous waste in violation of manifest or registration requirements.
 - Lastly, settled an administrative order with Sunnyvale Valero gas station for \$1,573 in penalties. Respondent washed approximately 15 gallons of gasoline to the storm drain after a fuel overspill accident by an employee.

An example of another noteworthy case was a referral to the Santa Clara District Attorney's office for criminal prosecution against Sierra Chemical Co. for mixing incompatible hazardous chemicals (sodium hypochlorite & muriatic acid) which resulted in an off site evacuation. The case was settled for approximately \$70,000.

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4. The City of Sunnyvale CUPA maintains an effective means of identifying new businesses to be regulated under the Unified Program through a coordinated and efficient plan review process with the city's One-Stop Permit Center. The One-Stop Center is supported by a city staff team with members from the Community Development, Public Works and Public Safety Departments. Through the One-Stop Permit Center, the City of Sunnyvale is able to provide streamlined plan review and permit issuance process.
5. The City of Sunnyvale CUPA continues to maintain an excellent coordination with other Unified Program Agencies for consistency and consolidation of the Unified Program within the County of Santa Clara. The City of Sunnyvale has continued to regularly attend the following Unified Program functions within the County of Santa Clara.
 - a. The program managers of each Unified Program Agency met monthly to discuss topics of common concern. The group reviewed any addition or modification to the Unidocs Web site before the change is made. In addition, the group worked to secure available grants to advance the capability of Unidocs for use as a statewide Web-based reporting program.
 - b. Consistency is a primary goal of the Countywide Training Meeting, which is scheduled every other month. On the first Tuesday of each month, inspectors from each Unified Program Agency met for presentations by knowledgeable individuals on topics important to the successful implementation of the Unified Program. Presentations covering hazardous waste regulations, environmental enforcement procedures, solar cell manufacturing, nonconductor development, underground tank systems, and ammonia refrigeration were given during the year. In addition, there were several "inspector roundtables" during FY 06/07 and one during FY 07/08 at which staff from all agencies had the opportunity to discuss and debate issues they felt were important to their programs and to the other CUPA's.
 - c. A third group with countywide membership, the Technical Committee, met twice during FY 06/07 and once during FY 07/08. Announcements are given to larger company representatives and business organizations, but the meeting is generally open to the public. The public has an opportunity to question CUPA procedures and policies, gather new regulatory information, and voice any issues important to the business community.
 - d. The Countywide Environmental Enforcement Task Force, hosted by the Santa Clara County District Attorneys Office, met once every other month to discuss enforcement cases which could have cross jurisdictional importance.

In addition to maintaining great coordination with other Unified Program Agencies within the county, the City of Sunnyvale CUPA is part of a fully integrated public safety department that includes police, fire and emergency medical services. The CUPA maintains an excellent relationship with and receives great support from the other units within the department.

6. The City of Sunnyvale CUPA has continued to provide outstanding outreach to the public and regulated community. For example, during FY 06/07, three hazardous waste generator workshops were conducted for the small to medium sized regulated facilities. During FY 07/08, two hazardous waste generator and one tiered permitting workshops were conducted for the small to medium sized regulated facilities. The hazardous waste generator classes were conducted during the late morning / early afternoon and included a free lunch. There were 95 participants in 06/07 and 67 participants in 07/08 that received two hours of

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regulatory and safety training. Each attendee received a copy of the Hazardous Waste Training CD produced by the CUPA Forum Board and DTSC, a hardcopy environmental reference packet, and other assorted training materials. The tiered permitting workshop was attended by 17 business representatives. Information on paperwork requirements, equipment issues, and facility procedures was presented.

A quarterly UST newsletter was published during FY 06/07. The one to two page newsletters, which were electronically mailed to UST owners and operators, provided information on new or proposed regulatory changes as well as general compliance guidance. The Unit also held two "Worker Right to Know" classes for City of Sunnyvale employees. A discussion of hazardous materials business plan requirements and material safety data sheets (MSDS) usage provided the employees with the necessary information to maintain a safe workplace.

The CUPA staff also participated in community events such as the Public Safety Pancake Breakfast and Columbia School Health Faire. A demonstration table with photographs and handout was provided.

Lastly, the CUPA maintains an informative Web site with an overview of the Unified Program elements and contains links to Unidocs, various agencies, forms, and other pertinent sites.

7. The City of Sunnyvale CUPA is expending more than five percent of its hazardous waste related time to the regulation of silver-only generators and universal waste handlers. Universal waste issues are checked during all hazardous waste inspections. In addition, in order for a commercial or industrial property owner to demolish its building structures or upgrade or renovate a building's lighting system, the CUPA requires that the fluorescent light tubes and/or light ballasts containing polychlorinated biphenyls must be managed properly.
8. The City of Sunnyvale CUPA has a group of highly dedicated professional staff. The three hazardous materials inspectors have been with the CUPA for at least five to 20 years and the CUPA Manager (Mr. Ron Staricha) has been with the CUPA for more than 20 years. During the business plan inspections conducted on March 10, 2009, the Cal EMA evaluator observed that the CUPA inspector (Ms. Rosanne Asuncion) was extremely thorough, prepared, and very knowledgeable. Ms. Asuncion toured the entire facility (Surgical Equipment Manufacturer and Research and Development) and was thorough on inspecting every item which was listed on the Chemical Inventory. Inspector Asuncion pointed out best practice approaches and also informed the owner/operator about universal waste, as well as answering any and all questions of the owner/operator. Ms. Asuncion was extremely helpful in trying to assist the owner/operator come into compliance. The overall business plan inspections observed by the Cal EMA evaluator were conducted in a very professional and thorough manner by a highly trained inspector.

On March 10, 2009, Inspector Stewart McGee conducted the UST site inspection in a thorough and professional manner. He used a detailed and complete inspection checklist to document the scope of the inspection and all the required elements for compliance. Stewart did an extensive pre-review of the UST file to verify operational compliance and all the required paperwork. Three spill buckets were observed to be leaking and Stewart worked with the service technician to attempt repairing the buckets and retesting. He left a Notice of Violation with a 30-day violation correction period and Certification of Compliance with the facility owner and explained the documentation that should be submitted to provide proof of compliance. Stewart returned to this facility after having conducted the second annual compliance inspection (which was done with the same detail as above) to see if the spill buckets had been repaired and to discuss Significant Operational Compliance (SOC) terminology so the owner would not be

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concerned about being in violation of SOC. Stewart also asked for suggestions on how to improve his inspection technique and procedure.

9. The City of Sunnyvale CUPA does an excellent job in carrying out the overall requirements of the UST program. Some examples of the outstanding elements in the CUPA program are identified below. The permitting process is thorough and all required documents are submitted and were found in each facility file. The permit includes all the required elements and they currently attach an approved monitoring plan. The current facility/tank/ monitoring forms (December 2007) have been collected for existing UST facilities. Financial Responsibility documentation is current and was found in all files reviewed. Designated Operator information is updated as needed and submitted with the Owners Statement of Understanding and Compliance. The CUPA meets the mandated UST inspection frequency of annual inspections of all UST facilities. The CUPA uses the SWRCB-developed compliance inspection checklist/report and their own checklist (which they make notations on during the pre-inspection review). They leave a Summary of Violations and a self certification form for return to compliance if needed after each inspection explaining the violations and the time allowed for return to compliance. In cases where violations are not corrected, the CUPA does an excellent job of taking enforcement using the AEO process for resolution and compliance. Also the CUPA has used the Red Tag authority for significant violations. The installation process is part of the City's Building Permit program and the CUPA must sign off before a permit is issued. The CUPA has an installation inspection checklist as well as a Closure checklist and documents each in the facility files. The CUPA's UST files are highly organized in chronological order and divided into sections such as inspections, required documentation, permitting, etc. The confidential information and enforcement documentation are kept in separate folders. The CUPA has also listed as Minimum Qualifications for Hazardous Materials (HM) Inspector applicants to be able to obtain International Code Council (ICC) UST Inspector certification within six months. All HM Inspector's within the CUPA are ICC certified.